IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 1766 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BHADRIPRASAD JAGANNATH SHAMRA
Versus
STATE OF GUJARAT AND ANOTHER

==========

Appearance :
MR KV SHELAT for Applicant.
MS MANISHA SHAH, APP for Respondent No. 1.
MR CJ VIN for Respondent No. 2.

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 06/02/2006

ORAL JUDGMENT

By filing this application, the applicant has prayed that process issued by learned Judicial Magistrate, First Class, Dahod in Criminal Case No.1604/1993 may be quashed. Respondent No.2 has filed complaint

before the Judicial Magistrate, First Class, Dahod alleging that the accused was permitted to run the cabin for a short period, as he is the brother of the complainant, however, the accused had prepared a concocted document by showing that the complainant has transferred his cabin in favour of the accused. The complaint was filed on 19-5-1993. Below the said complaint learned Magistrate passed an order under Section 156 (3) of Criminal Procedure Code. After receiving the police papers, learned Magistrate issued process under Section 406, 420, 467 and 468 of the Indian Penal Code.

Thereafter, the accused had filed an application for discharge under Section 245 (2) of the Criminal Procedure Code on the ground that on the basis of the document in question even the cabin is also transferred in his name in municipal records. It is also averred in the said application for discharge that the accused has filed a civil suit, which is pending before the civil court and, therefore, no cognizance of the said complaint can be taken under Section 195 (1) (b) (ii) and Section 340 of the Criminal Procedure Code, as ultimately the said document is produced before the Civil Court and it is for the Civil Court to take appropriate proceedings, in case it is found that it is a fabricated document.

Even though the matter is pending since 1997, neither the advocate for the applicant nor the advocate for the complainant is present. However, Ms.Manisha Shah, learned APP pointed out that if the forgery is alleged to have been committed before the document was filed in the Court, Section 195 (1) (b) (ii) is not applicable. In order to substantiate her say, she has relied upon the decision of the Supreme

Court in K.Vengadachalam v. K.C.Palanisamy and others, reported in 2005 SCC (Cri.) 1673.

Ms.Manisha Shah, learned APP, also relied upon the decision of the Supreme Court in the case of Mahadev Bapuji Mahajan (dead) and another v. State of Maharashtra reported in 1994 SC 1549, wherein it is held by the Supreme Court that if the offence regarding forging the document has taken place before the start of proceedings before the revenue Court, it is not necessary for the revenue Court to complain in this connection and that cognizance taken by the Court cannot be said to be invalid by this Court.

It is required to be noted that even while deciding the discharge application, learned Magistrate has given cogent reasons for not discharging the accused.

Considering the facts and circumstances of the case and considering the fact that according to the complainant the alleged forgery is committed even before the document was tendered in the Court, this is not a matter for quashing the proceedings and therefore, I do not find any substance in this application, hence, this application is rejected. Rule is discharged. It will be open to the applicant to raise appropriate defence in the pending trial and it is for the concerned Magistrate to decide the same in accordance with law. Since Criminal Case is more than 13 years old, learned Magistrate may dispose of the same as early as possible and in accordance with law. Writ to be sent to the trial Court forthwith.

(P.B.MAJMUDAR, J.)

/malek